

Before the  
Federal Communications Commission  
Washington, D.C. 20554

<p><b>In the Matter of</b></p> <p><b>APCC Services, Inc.,</b></p> <p><b>Complainant,</b></p> <p style="text-align: center;"><b>v.</b></p> <p><b>CCI Communications, LLC;</b></p> <p><b>CCI Communications, Inc.;</b></p> <p><b>Creative Communications, Inc.; and</b></p> <p><b>Link Systems, Inc. ,</b></p> <p><b>Defendants.</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>File No. EB-09-MD-005</b></p>
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**MEMORANDUM OPINION AND ORDER**

**Adopted: June 28, 2010**

**Released: June 29, 2010**

**By the Chief, Enforcement Bureau:**

**I. INTRODUCTION**

1. This Memorandum Opinion and Order grants in part a formal complaint<sup>1</sup> that APCC Services, Inc. (“APCC”) filed against CCI Communications, LLC (“CCI”) and other defendants under section 208 of the Communications Act of 1934, as amended (“Act”).<sup>2</sup> As explained below, because CCI is a “Completing Carrier” under rule 64.1300(a),<sup>3</sup> it owes per-call compensation for all calls it completed.<sup>4</sup> Following the approach used by the Commission in

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<sup>1</sup> Formal Complaint, File No. EB-09-MD-005 (filed Mar. 26, 2009) (“Complaint”).

<sup>2</sup> 47 U.S.C. § 208. One of the original defendants, CCI Network Services, Inc. (“CNS”), reached a settlement with APCC resulting in the dismissal of the claims against CNS. *See* Order Dismissing Defendant CCI Network Services, Inc., File No. EB-09-MD-005 (rel. Aug. 13, 2009). CCI Communications, Inc., Creative Communications, Inc., and Link Systems, Inc., never entered an appearance in this proceeding. On April 19, 2010, APCC moved to dismiss the claims against those defendants. *See* Motion to Dismiss, File No. EB-09-MD-005 (filed Apr. 19, 2010) (“Motion to Dismiss”). The Motion to Dismiss was unopposed, and the Commission granted it on April 29, 2010. *See* Order Dismissing Certain Defendants, File No. EB-09-MD-005 (rel. Apr. 29, 2010). As a result, CCI remains the lone defendant.

<sup>3</sup> 47 C.F.R. § 64.1300(a).

<sup>4</sup> 47 C.F.R. § 64.1300(b) (“[A] Completing Carrier that completes a coinless access code or subscriber toll-free payphone call from a switch that the Completing Carrier either owns or leases shall compensate the payphone service provider....”).

*APCC v. Radiant*,<sup>5</sup> we conclude that APCC is entitled to per-call compensation from CCI in the amount of \$1,868,451, plus interest.

## II. BACKGROUND

### A. Per-Call Payphone Compensation

2. Section 276 of the Act directed the Commission to establish a per-call compensation plan to ensure that all payphone service providers (“PSPs”) are fairly compensated for “each and every completed intrastate and interstate call using their payphone.”<sup>6</sup> Included among the calls subject to this mandate are certain categories of coinless payphone calls – known as “dial-around calls” – where the caller makes a coinless call using a carrier other than the payphone’s presubscribed long distance carrier.<sup>7</sup> The Commission’s implementing rules place the responsibility for paying dial-around compensation – currently set at a default rate of \$.494 per call – on the “Completing Carrier,” which is the “long distance carrier or switch-based long distance reseller that completes a coinless access code or subscriber toll-free payphone call.”<sup>8</sup>

### B. The Parties

3. APCC is a corporation established to serve as a clearinghouse for the billing and collection of dial-around compensation on behalf of certain PSPs (“Represented PSPs”).<sup>9</sup> CCI is a common carrier providing interexchange telecommunications services and switch-based resale.<sup>10</sup> Significantly, CCI admits that it is a Completing Carrier with respect to the calls at issue under the Commission’s payphone compensation rules.<sup>11</sup>

### C. The Litigation

4. In its Complaint, APCC alleged that CCI failed to pay per-call compensation for calls made during the period beginning July 1, 2004, and ending September 30, 2008 (3Q2004-3Q2008), in violation of sections 201(b) and 276(b) of the Act and sections 64.1300 and 64.1310 of the Commission’s rules.<sup>12</sup> The Complaint further asserted that CCI failed to comply with the Commission’s payphone call tracking and reporting requirements, in violation of sections 201(b) and 276(b) of the Act and sections 64.1310 and 64.1320 of the Commission’s rules.<sup>13</sup>

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<sup>5</sup> *APCC Services, Inc. v. Radiant Telecom, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 8962 (2008) (“*APCC v. Radiant*”).

<sup>6</sup> 47 U.S.C. § 276(b)(1)(A).

<sup>7</sup> See, e.g., *Request to Update Default Compensation Rate for Dial-Around Calls from Payphones*, Report and Order, 19 FCC Rcd 15636, 15638, ¶ 3 & n.9 (2004).

<sup>8</sup> 47 C.F.R. § 64.1300(a)-(b), (d).

<sup>9</sup> Joint Statement, File No. EB-09-MD-005 (filed June 22, 2009) (“Joint Statement”) at 2, ¶ 1.

<sup>10</sup> Joint Statement at 2, ¶¶ 4, 5.

<sup>11</sup> Joint Statement at 2, ¶ 6.

<sup>12</sup> See, e.g., Complaint at 3, ¶ 5, 9, ¶¶ 22-23. See 47 U.S.C. §§ 201(b), 276(b); 47 C.F.R. §§ 64.1300, 64.1310.

<sup>13</sup> See, e.g., Complaint at 3, ¶ 6, 10, ¶¶ 28-29. See 47 U.S.C. §§ 201(b), 276(b); 47 C.F.R. §§ 64.1300, 64.1310, 64.1320. Commission rule 64.1310 requires Completing Carriers to establish a call tracking system that accurately tracks coinless access code or subscriber toll-free payphone calls to completion; to submit to PSPs sworn statements by the Completing Carrier’s Chief Financial Officer that payments are accurate and complete; and to furnish to PSPs quarterly reports showing numbers dialed and completed, volume of calls for each number, and other essential data. See 47 C.F.R. § 64.1310(a)(1), (3), (4). Commission rule 64.1320 requires independent third party audits of the Completing Carrier’s tracking

5. In addition to requesting an order requiring CCI to come into compliance with rules 64.1300-64.1320,<sup>14</sup> the Complaint sought damages for two categories of calls: (1) calls reported as delivered to CCI by an Intermediate Carrier (“Intermediate Carrier Reported Calls”)<sup>15</sup>; and (2) calls carried by CCI for which the 8yy (toll-free) numbers were translated into local POTS numbers before the calls were routed to CCI’s network (“POTS Translated Calls”).<sup>16</sup> With respect to the Intermediate Carrier Reported Calls, APCC argued that the number of completed calls should be “the number of dial-around calls delivered to Defendant each quarter by Intermediate Carriers from the Represented PSPs’ payphones” (*i.e.*, all calls reported as delivered, regardless of their duration).<sup>17</sup> APCC subsequently abandoned its claim to compensation for the POTS-Translated Calls.<sup>18</sup>

6. In the Answer, CCI admitted that (1) it is a Completing Carrier; (2) as such, it is liable for compensation for a portion of the calls at issue; and (3) it did not comply with the Commission’s system audit and CFO certification requirements.<sup>19</sup> The Answer further argued that the completed calls for which CCI is liable should be calculated using a 120 second timing proxy (*i.e.*, only calls lasting more than 120 seconds should be deemed “completed”).<sup>20</sup> According to the Answer, CCI’s situation is unique because “almost all of the calls made using its prepaid calling cards are international to Mexico and South America,” and the international nature of the calls poses barriers that prevent the calls from connecting quickly.<sup>21</sup> In particular, the Answer asserted that the delays in connecting users result from “inferior quality of the telecommunications infrastructure,” instructions being presented in “languages different from the users’ native tongue,” and “variable government regulations affecting the telecommunications infrastructure.”<sup>22</sup>

7. In its Reply, APCC argued that, because CCI conceded that all of the Intermediate Carrier Reported Calls were sent to its switch, the Commission need only decide how many calls CCI “completed.”<sup>23</sup> According to APCC, CCI’s data concerning completed calls is unreliable, because CCI has never performed a payphone system audit as required by the Commission’s rules,<sup>24</sup> and CCI’s assumption that only calls over 120 seconds are completed is unfounded.<sup>25</sup> APCC further urged the Commission to require CCI to produce data showing the number of calls lasting 30 seconds or longer and then to apply the damages calculation used by

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system and annual audit reports to the Commission and to each of the Completing Carrier’s PSPs. *See* 47 C.F.R. § 64.1320.

<sup>14</sup> Complaint at 60, ¶ 231.

<sup>15</sup> The Commission’s rules define an Intermediate Carrier as “a facilities-based long-distance carrier that switches payphone calls to other facilities-based long-distance carriers.” 47 C.F.R. § 64.1310(b).

<sup>16</sup> Complaint at 3-4, ¶ 7, 60, ¶ 231.

<sup>17</sup> Complaint at 43, ¶ 166 (“In the absence of any specific cognizable evidence as to the percentage of completed calls, the Commission must require payment on all calls, or it risks PSPs being under-compensated in violation of the statutory mandate.”).

<sup>18</sup> *See* Request for Resolution on the Pleadings, File No. EB-09-MD-005 (filed Feb. 4, 2010) (“Request for Resolution”) at 2, 6.

<sup>19</sup> CCI Communications, LLC’s Revised Answer to Formal Complaint, File No. EB-09-MD-005 (filed May 21, 2009) (“Answer”) at 5, ¶ 6, 26-27, ¶ 18, 144, ¶¶ 51-53. *See* note 13, above.

<sup>20</sup> Answer, Legal Analysis at 32-34.

<sup>21</sup> Answer, Legal Analysis at 33.

<sup>22</sup> Answer, Legal Analysis at 33.

<sup>23</sup> Reply, File No. EB-09-MD-005 (filed June 12, 2009) (“Reply”) at 5, ¶ 11.

<sup>24</sup> *See* 47 C.F.R. § 64.1320.

<sup>25</sup> Reply at 5-6, ¶ 13.

the Commission in *APCC v. Radiant*.<sup>26</sup>

8. On June 22, 2009, the parties submitted their Joint Statement.<sup>27</sup> CCI acknowledged that “it is the liable Completing Carrier” for the calls at issue in this proceeding and that, for the period 3Q2004 to 4Q2007, CCI received 6,321,578 calls that originated from the represented PSP payphones.<sup>28</sup> Although the Joint Statement noted the parties’ disagreement regarding the appropriate length of a completed call proxy,<sup>29</sup> CCI subsequently admitted that, of the total stipulated calls it received from Intermediate Carriers, 1,991,771 were of 30 seconds duration or longer.<sup>30</sup>

9. On February 4, 2010, APCC filed its Request for Resolution, arguing that no material disputes remain, in either fact or law, and urging the Commission to rule on the Complaint based on the parties’ pleadings.<sup>31</sup> Specifically, APCC explained that it has abandoned all claims against CCI *except for* its claim for compensation for those calls as to which CCI has stipulated liability,<sup>32</sup> plus interest.<sup>33</sup> According to APCC, the only remaining issue is determining the number of “completed calls,” which can be accomplished by applying the reasoning of *APCC v. Radiant*.<sup>34</sup> CCI did not respond to the Request for Resolution.<sup>35</sup>

### III. DISCUSSION

10. As the Request for Resolution correctly notes, the key facts are not in dispute. There has been a complete and inclusive pleading cycle: CCI submitted an Answer to the Complaint and responses to interrogatories, and it developed a Joint Statement with APCC. In those documents, CCI acknowledged that it is a Completing Carrier,<sup>36</sup> stipulated to liability for the 6,321,578 calls it received from Intermediate Carriers *to the extent those calls were completed*,<sup>37</sup> and provided the number of those calls that lasted more than 30 seconds.<sup>38</sup> For its part, APCC has “waived all of its claims for damages except for those calls for which CCI has explicitly conceded liability.”<sup>39</sup>

11. The issue, then, is how to calculate the portion of the 6,321,578 calls that were “completed,” thus triggering CCI’s compensation obligation. APCC urges the Commission to

<sup>26</sup> Reply at 6, ¶ 13, 13, ¶ 32 (citing *APCC v. Radiant*, 23 FCC Rcd at 6971-72, ¶ 30).

<sup>27</sup> Joint Statement. See 47 C.F.R. §§ 1.732(h), 1.733(b)(1)(v), 1.733(b)(2).

<sup>28</sup> Joint Statement at 3, ¶ 16, 4, ¶¶ 17, 20.

<sup>29</sup> Joint Statement at 4, ¶¶ 18-19.

<sup>30</sup> CCI Communications, LLC’s Responses to Complainant’s (1) Initial Interrogatories and Requests for Production and (2) Second Set of Interrogatories, File No. EB-09-MD-005 (filed Jan. 19, 2010) (“CCI’s Interrogatory Responses”) at 10. In addition to providing the number of calls at a 30-second proxy, CCI noted that it already had paid compensation to APCC for 374,384 of those calls. *Id.*

<sup>31</sup> Request for Resolution at 1.

<sup>32</sup> Request for Resolution at 2, 5-6. Thus, APCC no longer seeks compensation for calls during the 1Q2008-3Q2008 period.

<sup>33</sup> Request for Resolution at 2 (“APCC is also waiving some of the interest to which it is entitled”), 7-8.

<sup>34</sup> Request for Resolution at 7-8.

<sup>35</sup> See 47 C.F.R. § 1.727(e) (providing that oppositions to motions may be filed and served within five business days after the motion is filed and served and not after).

<sup>36</sup> Request for Resolution at 1, 5, 7-8; Joint Statement at 4, ¶ 20.

<sup>37</sup> Request for Resolution at 5, 7; Joint Statement at 3, ¶ 16, 4, ¶¶ 17, 20.

<sup>38</sup> Request for Resolution at 6, 7; CCI’s Interrogatory Responses at 10.

<sup>39</sup> Request for Resolution at 2.

apply the rationale of *APCC v. Radiant*. In that case, APCC argued that the defendant should be liable for all calls delivered to its switch because it failed to track calls to completion, and the defendant maintained that the Commission should use a 30 second timing proxy to determine which calls were completed.<sup>40</sup> Faced with the two sets of unaudited data, the Commission adopted a “middle view,” finding that “in order to ensure that the represented PSPs are adequately compensated,” it was appropriate to hold the defendant liable not only for calls lasting 30 seconds or longer, but also for “a significant portion” of those calls lasting less than 30 seconds.<sup>41</sup> Consequently, the Commission required the defendant to compensate APCC for all calls of 30 seconds duration or longer, and for half of all calls of lesser duration.<sup>42</sup> The Commission noted that its approach – although “not perfect” – was necessary because of the defendants’ “willful failure to comply with rules that, when followed by Completing Carriers, ensure that the mandates of Section 276 are achieved.”<sup>43</sup>

12. CCI urges the Commission to utilize a 120 second proxy – rather than a 30 second proxy – because the majority of the calls at issue are international and, therefore, purportedly do not connect quickly.<sup>44</sup> International calls, however, also were at issue in *APCC v. Radiant*,<sup>45</sup> and the Commission nonetheless found that a 30 second proxy was reasonable. Indeed, the Commission noted that even a 30 second proxy undercounts the number of completed calls.<sup>46</sup> We see no reason not to apply the analysis of *APCC v. Radiant*. Here, as in *APCC v. Radiant*, we are presented with unaudited data including the number of calls received from Intermediate Carriers and the number of calls lasting more than 30 seconds. Here, as in *APCC v. Radiant*, the defendant acknowledges liability for completed calls and admits that it has not complied with the Commission’s requirements regarding audits of its tracking system or submission of a CFO certification. Further, CCI’s decision not to respond to the Request for Resolution is noteworthy.<sup>47</sup>

13. Accordingly, we find that CCI must compensate APCC for all calls that lasted 30 seconds or longer (1,991,771), and for half of the calls that lasted less than 30 seconds (1,416,135, half of the difference between the 1,991,771 calls that were over 30 seconds and the 6,321,578 stipulated Intermediate Carrier calls), minus the calls for which CCI already has paid (374,384), for a total of 3,782,290 calls. At the per-call rate of \$.494, the total compensation owed is \$1,868,451, plus interest. As we stated in *APCC v. Radiant*, interest in unpaid dial-around compensation cases during the period in question accrues at an annual rate of 11.25 percent, starting on the first day of the quarter that is one quarter after the one in which the billed call was made.<sup>48</sup> Thus, we accept the interest calculation offered by APCC in Exhibit 5 of its Request for Resolution.

<sup>40</sup> *APCC v. Radiant*, 23 FCC Rcd at 8971, ¶ 28.

<sup>41</sup> *APCC v. Radiant*, 23 FCC Rcd at 8971, ¶ 30.

<sup>42</sup> *APCC v. Radiant*, 23 FCC Rcd at 8971-72, ¶ 30.

<sup>43</sup> *APCC v. Radiant*, 23 FCC Rcd at 8972, ¶ 30.

<sup>44</sup> Answer, Legal Analysis at 33.

<sup>45</sup> Revised Answer to Formal Complaint, *APCC Services, Inc. v. Radiant Telecom, Inc., Intelligent Switching and Software, LLC, and Radiant Holdings, Inc.*, File No. EB-05-MD-016 (filed Oct. 7, 2005) at 2 n.4 (“Radiant is primarily in the calling card business. The vast majority of its end-user customers use the cards to place international calls.”).

<sup>46</sup> *APCC v. Radiant*, 23 FCC Rcd at 8971, ¶ 29 (“Clearly, application of the 30 second proxy as proposed would exclude any completed call that lasted fewer than 30 seconds.”).

<sup>47</sup> 47 C.F.R. § 1.727(e) (providing that “[f]ailure to oppose any motion may constitute grounds for granting of the motion.”)

<sup>48</sup> *APCC v. Radiant*, 23 FCC Rcd at 8974, ¶ 34.

**IV. ORDERING CLAUSES**

14. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), 201, 208, and 209 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 208, and 209, and sections 1.727 and 64.1300-64.1320 of the Commission's rules, 47 C.F.R. §§ 1.727, 64.1300-64.1320, and the authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the Request for Resolution on the Pleadings IS GRANTED.

15. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 4(j), 208, and 209 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 208, and 209, and sections 1.720-1.736 and 64.1300-64.1320 of the Commission's rules, 47 C.F.R. §§ 1.720-1.736, 64.1300-64.1320, and the authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the Formal Complaint IS GRANTED to the extent discussed herein, and is otherwise denied.

16. IT IS FURTHER ORDERED, pursuant to sections 1, 4(i), 4(j), 201, 208, and 209 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 208, and 209, and sections 1.720-1.736 and 64.1300-64.1320 of the Commission's rules, 47 C.F.R. §§ 1.720-1.736, 64.1300-64.1320, and the authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that, within 90 days of the release of this Order, CCI Communications, LLC shall pay APCC Services, Inc. damages in the amount of \$1,868,451, together with interest on such damages at the rate of 11.25 percent, accruing on the first day of the quarter that is one quarter after the one in which the billed call was made.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau